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No. 96-653

In the Supreme Court of the United States

OCTOBER TERM, 1996

KENNETH LEE BAKER AND STEVEN ROBERT BAKER,
by his next friend, MELISSA THOMAS, PETITIONERS

v.

GENERAL MOTORS CORPORATION, RESPONDENT

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the Full Faith and Credit Clause of the United States Constitution (Art. IV, § 1) and 28 U.S.C. § 1738 required a federal district court in Missouri to respect an injunction entered by a state court in Michigan that prohibited a former employee of General Motors Corporation from testifying against the company.

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INTEREST OF THE AMICUS CURIAE

The Product Liability Advisory Council, Inc. ("PLAC") is a non-profit corporation with 124 corporate members from a broad cross-section of American industry. (A list of PLAC's members is attached as an Appendix.) PLAC's purpose is to submit *amicus curiae* briefs on significant issues that affect the law of product liability.[1] PLAC has submitted many *amicus* briefs in state and federal courts, including this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners' brief is a remarkable example of advocacy by misdirection. It argues that full faith and credit is not warranted in a variety of situations that bear little or no resemblance to the case at hand: that full faith and credit is inappropriate if it means precluding suits by third parties, if it mandates enforcing antisuit injunctions, if it prevents whistleblowers from revealing concealed information, or if a state court purports to enjoin parties from seeking relief in federal court. But the Court need not address any of these issues to resolve the question actually presented, which is whether a federal district court in Missouri may ignore the constitutional and statutory obligation to give full faith and credit to the judgment of a Michigan state court because it may have incidental, and legally harmless, effects on a third party.

To put this case in its proper context, two facts need to be emphasized at the outset: First, the case arises in the posture it does only because Ronald Elwell, having accepted an undisclosed sum of money to settle a lawsuit with respondent General Motors Corporation ("GM") by entering into a consent decree, chose to disregard the court's order and violate the injunction. Had Elwell complied with the consent decree, any full faith and credit issues would have been greatly simplified: the only courts with power to order Elwell's testimony would

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[1] Letters from the parties consenting to the filing of this brief have been lodged with the Clerk of this Court. See S. Ct. R. 37.3. This brief has been written entirely by counsel for PLAC and has been paid for entirely by PLAC. See Rule 37.6.

have been in Michigan, the state that issued the judgment and where Elwell lived at the time of the settlement, and New Mexico, where it appears that he currently resides. Instead, as petitioners' reference to 33 other courts in which Elwell has testified makes clear, Elwell scorned the court's decree and embarked on a second career as a paid consultant who makes his living testifying against GM.

Second, petitioners want Elwell to testify only in his capacity as an expert. See Pet. App. 22a ("The parties agree that Elwell is an expert on G.M. fuel systems, including the design history, fuel system safety, design decision-making and subsequent alternative designs. These are the areas into which plaintiffs wish to inquire.").[2] Indeed, Elwell could not go beyond his general expertise about GM products without getting into forbidden areas where his knowledge is based on privileged information — which even petitioners concede is beyond the scope of their entitlement. *Ibid.* No claim is or could be made that Elwell's testimony is either crucial to petitioners' case or irreplaceable. Petitioners may believe that Elwell's unrelenting ill-will toward GM makes him an especially desirable witness, but there are other, equally qualified witnesses who could offer the same information to a jury. The question is thus whether petitioners' desire to have the particular expert of their choice is so important as to overcome the values embodied in the Full Faith and Credit Clause.

The answer is plainly no: As the final judgment of a court with jurisdiction over the parties and the subject matter, the

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[2] Petitioners apparently listed Elwell as a "fact witness" in their request for an order to depose him (Pet. App. 22a), but nothing turns on this label. The substance of Elwell's testimony, as described by the district court, is clearly that of an expert called because his "technical * * * knowledge will assist the trier of fact." Fed. R. Evid. 702. Indeed, petitioners told the district court that they were not seeking information that is "specific" or that Elwell obtained as a member of GM's in-house litigation team. They were, rather, calling Elwell to testify because of his "expert[ise]" on the *general* history, development, and safety of GM fuel systems. *Ibid.*

Michigan decree is entitled to the same respect and recognition as any other judgment. That the decree orders injunctive relief in no way affects this conclusion. And petitioners' claim that excluding Elwell's testimony violates their due process rights by binding them to a judgment rendered in proceedings to which they were not parties is spurious. The judgment binds only GM and Elwell. Enforcing the judgment against Elwell may have an incidental effect on petitioners, but judgments often affect the litigation strategies or legal interests of third parties. Here, petitioners are being deprived merely of the use of a single, nonessential witness whose testimony can be replaced, something the rules of evidence routinely do for a variety of reasons less weighty than the constitutional obligation to give full faith and credit to the judgment of a sister state. Finally, petitioners have not offered any justification for creating an exception to the Full Faith and Credit Clause — something this Court has rarely done and then only for the most compelling reasons.

ARGUMENT

I. THE FULL FAITH AND CREDIT CLAUSE REQUIRED THE TRIAL COURT TO EXCLUDE ELWELL'S TESTIMONY

On its face, the Michigan decree bears all the earmarks of a judgment entitled to full faith and credit: it is the final judgment of a court with jurisdiction over the parties and the subject matter, and no one maintains that it was obtained under duress or by fraud. See *Riehle v. Margolies*, 279 U.S. 218, 225 (1929); Lea Brilmayer *et al.*, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM 177-85 (1986). That the judgment was entered by consent in no way affects the analysis, because the decree embodied a lawful agreement under Michigan law and settled a genuine dispute before the Michigan court. See *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873 (1996) (federal court required to give full faith and credit to a state court consent decree).

A. The Full Faith And Credit Clause Applies To Injunctions

Petitioners half-heartedly suggest that injunctions may fall outside the scope of the Full Faith and Credit Clause. Pet. Br. 25. They do not press the point, for reasons that are apparent from the analysis below. Nevertheless, because the authorities they cite, if read out of context, could confuse this important issue, we address it here.

1. There is, to begin with, no basis in the language of either the Full Faith and Credit Clause or its implementing statute, 28 U.S.C. § 1738, to justify treating injunctions differently from other judgments. Both provisions command that full faith and credit must be accorded to "judicial proceedings," with no limitations, and so both must be read to require giving equity decrees the same measure of respect as judgments for the payment of money. See *Barber v. Barber*, 323 U.S. 77, 87 (1944) (Jackson, J., concurring); RESTATEMENT (SECOND) OF CONFLICT OF LAWS ("RESTATEMENT (SECOND)") § 102, comment *c* (1971). The decision to use this inclusive language could hardly have been inadvertent. The drafters of the Constitution and of Section 1738 were acutely conscious of the distinction between law and equity, much more so than lawyers today (given the merger of law and equity), and they were careful to distinguish between them where appropriate. See, *e.g.*, U.S. Const., Amend. VII; Process Act of 1792, § 2, 1 Stat. 275, 276 (authorizing federal courts to promulgate rules for equity and admiralty cases "according to the principles, rules and usages which belong to courts of equity and to courts of admiralty respectively, as contra-distinguished from courts of common law"). The failure to draw any distinction in connection with the Full Faith and Credit Clause thus suggests that the Clause means exactly what it says: recognition is owed to the "judicial proceedings" of other states without regard for the nature of the remedy.

The conclusion that injunctions are entitled to the same respect as other judgments also makes sense, inasmuch as the policies behind full faith and credit apply with equal force and in precisely the same manner whether a decree orders equitable relief or money damages. Prior to judgment, as this Court has explained, "since each of the states of the Union has constitutional authority to make its own law with respect to persons and events within its borders, the full faith and credit clause does not ordinarily require it to substitute for its own law the conflicting law of another state." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 436 (1943). So long as a state has contacts sufficient to give it a legitimate interest in the disposition of the suit, its courts may apply their own law. See, *e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981); *Pacific Employers Ins. Co. v. Industrial Acc. Comm'n*, 306 U.S. 493 (1939); *Alaska Packers Assoc. v. Industrial Acc. Comm'n*, 294 U.S. 532 (1935).

Once a court has taken the further step of actually adjudicating a case, however, this freedom of choice disappears: The state whose court has devoted its resources to resolving the dispute and placed its prestige and dignity behind a judgment acquires an interest in the finality of the decree — an interest that must be respected by courts in other states as a matter of federal constitutional law. *Magnolia Petroleum Co.*, 320 U.S. at 436-39; *Williams v. North Carolina*, 317 U.S. 287, 293-96 (1942); *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 293 (1980) (Rehnquist, J., dissenting). Every court in the United States must give the judgment the same effect and recognition as it would receive from the court that rendered it. 28 U.S.C. § 1738. In this way, the Full Faith and Credit Clause protects the legitimate interests of parties and courts in seeing that "there be an end of litigation." *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 525 (1931). More important, the Clause avoids problems that would arise if courts in different states were to issue conflicting decrees, and so helps

"weld the independent states into a nation." *Johnson v. Muelberger*, 340 U.S. 581, 584 (1951). As Justice Stone explained for the Court in *Milwaukee County v. M.E. White Co.*, 296 U.S. 268 (1935):

> The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.

Id. at 276-77. See also Eugene F. Scoles & Peter Hay, CONFLICT OF LAWS § 24.2 (2d ed. 1992).

These vital interests are present in the same manner and to the same degree whether the final judgment of a court takes the form of an award of damages, a declaration of rights, or an injunction. The court that rendered the judgment has invested its time and resources to resolve a dispute and has placed its institutional reputation behind a final decree. To allow courts in other states to give this judgment less than full respect simply because it is in the form of an injunction invites precisely the mischief that the Full Faith and Credit Clause was designed to prevent — and for no discernible reason.

Indeed, the threat to judicial comity is, if anything, enhanced when an injunction is involved. Courts provide this remedy only after making special findings that extraordinary relief is required, and injunctions typically implicate the interests and resources of the rendering court to a greater degree than an ordinary judgment for damages. See Dan B. Dobbs, THE LAW OF REMEDIES §§ 2.4, 2.5, 2.9 (2d ed. 1993). Hence, as one leading commentator has observed, reflecting the views of virtually everyone in the field, the notion that an equity decree should be entitled to less than full faith and credit is "indefensible." Albert Ehrenzweig, CONFLICT OF LAWS 182

(rev. ed. 1962); *see also* Scoles & Hay, *supra*, at 964; Roger C. Cramton, David B. Currie, Herma Hill Kay & Larry Kramer, CONFLICT OF LAWS 453-54 (5th ed. 1993). For this reason, and apart from the narrow exceptions discussed below, lower courts have invariably given recognition without regard for whether a judgment is in law or in equity. See, *e.g.*, *In re Marie Callender Pie Shops, Inc.*, 592 P.2d 1050 (Or. App. 1979); *Spence v. Durham*, 198 S.E.2d 537 (N.C. 1973), *cert. denied*, 415 U.S. 918 (1974); *Rich v. Con-Stan Indus., Inc.*, 449 S.W.2d 323 (Tex. Ct. Civ. App. 1969); *LaVerne v. Jackman*, 228 N.E.2d 249 (Ill. App. 1967).

2. Petitioners offer no explanation, much less a justification, for their suggestion that injunctions ought not to receive full faith and credit, a conclusion that would in a stroke render the Full Faith and Credit Clause inapplicable to a substantial portion of modern litigation. They merely assert that injunctions have no extraterritorial effect under the Full Faith and Credit Clause, citing § 102 of the RESTATEMENT (SECOND) and this Court's decision in *Lynde v. Lynde*, 181 U.S. 183 (1901). Pet. Br. 25-26.[3] But their brief is carefully written to conceal a crucial distinction, drawn by both authorities, between questions of *recognition* and questions of *enforcement*. As explained in the RESTATEMENT's "introductory note":

> A foreign judgment may be entitled to two forms of respect, namely, recognition and enforcement. * * * [A] judgment is recognized to the extent that it is given the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the state where it was rendered. Some judgments,

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[3] Petitioners add a "see also" citation to *Slater v. Mexican Nat'l R.R. Co.*, 194 U.S. 120 (1904), and *Tennessee Coal, Iron & R.R. Co. v. George*, 233 U.S. 354 (1914). But these are *choice of law* cases and have nothing to do with full faith and credit to *judgments*, which raises entirely different considerations. *Magnolia Petroleum Co.*, 320 U.S. at 436-39; *Thomas v. Washington Gas Light Co.*, 448 U.S. at 293 (Rehnquist, J., dissenting).

> such as those for the payment of money, entitle the plaintiff to affirmative relief. When this relief is granted, the judgment is said to be enforced.

RESTATEMENT (SECOND), at 302.

According to petitioners' own source — § 102 of the RESTATEMENT (SECOND) — there is no question that a judgment "that orders the doing of an act other than the payment of money or that enjoins the doing of an act will be given the same degree of recognition as any other judgment," an obligation "required by full faith and credit." *Id.* § 102, comment *b*. The RESTATEMENT then goes on to observe, as petitioners indicate, that this Court has not yet ruled on whether the Full Faith and Credit Clause requires a state to *enforce* another state's judgment ordering or enjoining the doing of an act. But while the RESTATEMENT takes no definitive position on the question, its commentary plainly favors extending the obligation.[4] More

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[4] See RESTATEMENT (SECOND), § 102, comment *c* at 307-08:

> It may well be that the Supreme Court, when presented with the question, will hold that the enforcement of such decrees is required by full faith and credit. In support of such a position, reliance may be placed upon the language of the full faith and credit clause * * * and its implementing statute .* * * Since the clause and its implementing statute refer to "judicial proceedings" without limitation, it can be argued that they must be read as applying to equity decrees of all types and as requiring that such decrees be given the same measure of respect as judgments for the payment of money. In further support of such a position, reliance can also be placed on the fact that a majority of State courts have enforced sister State judgments ordering the conveyance of land.

"In opposition to these arguments," the RESTATEMENT (SECOND) offers only an assertion from the 1934 RESTATEMENT that because issuing an injunction is a matter of discretion, a decision by one court will not "exclude the use of discretion by the second court." *Ibid.* As explained below, we agree with this statement insofar as it means that a second court has the *same* discretion as the court that rendered the judgment. It is, however, senseless to say that, because the rendering court has some discretion, a second court has more, and it is a *non sequitur* to make the fact of discretion grounds to

important, the case law overwhelmingly favors this result, particularly cases decided since the RESTATEMENT (SECOND) was adopted in 1971. See cases cited in the Reporter's Note to § 102 and in the subsequent appendices to the RESTATEMENT (SECOND).

That there should even be a distinction between recognition and enforcement may seem odd. This becomes less perplexing if we understand the background properly, just as it becomes apparent why the doctrine is irrelevant in this case. The distinction between recognition and enforcement has its origin in certain historical peculiarities of full faith and credit law. Rather than make the judgment of one state immediately enforceable in another, the practice has always been for a party seeking the benefit of a judgment to bring suit on that judgment in the second state. The Full Faith and Credit Clause then requires the second state to recognize the judgment in terms defined by the preclusion law of the state that rendered it, with the result that the second state issues its own judgment to the same effect as the first one. See Robert A. Leflar, Luther L. McDougal & Robert L. Felix, AMERICAN CONFLICTS LAW § 78 (4th ed. 1986). The details for enforcing this new judgment are then treated as a matter of procedure, governed by forum law. Hence, the statement in *Lynde* — quoted grossly out of context by petitioners (Pet. Br. 26) — that the provisions of a foreign judgment providing for its enforcement "being in the nature of execution, and not of judgment, could have no extraterritorial operation" and that enforcement in the second state depends only on its own "local statutes and practice." 181 U.S. at 187.

As with other problems at the border of substance and procedure, determining when the forum may apply its own law and when full faith and credit requires the forum to yield is not

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ignore the judgment altogether.

always easy.[5] But wherever the precise boundary lies — something the Court need not address to decide this case — it is fatuous to say that, because the forum may sometimes apply its own law as to the mode and form of enforcement, it may simply refuse to enforce the judgment of a sister state altogether. On the contrary, the Full Faith and Credit Clause forbids the forum to discriminate against the law or judgment of a sister state that calls for a kind of enforcement that the forum provides in domestic cases. *Broderick v. Rosner*, 294 U.S. 629 (1935) (court may not use local rules of procedure to discriminate against foreign claims or judgments). Thus, as the Court explained in *Sistare v. Sistare*, 218 U.S. 1 (1910):

> [A]s pointed out in *Lynde v. Lynde*, although mere modes of execution provided by the laws of a State in which a judgment is rendered are not, by operation of the full faith and credit clause, obligatory upon the courts of another State in which the judgment is sought to be enforced, nevertheless if the judgment be an enforceable judgment in the State where rendered the duty to give effect to it in another State clearly results from the full faith and credit clause, although the modes of procedure to enforce the collection may not be the same in both States.

Id. at 26.[6]

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[5] This Court has held, for example, that a state is not bound to establish judicial machinery for foreign suits that it does not provide for its own causes of action, *Anglo-American Provision Co. v. Davis Provision Co.*, 191 U.S. 373 (1903), and that it may apply its own non-discriminatory statute of limitations, *M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312 (1839).

[6] Problems that formerly arose due to discrepancies in the details of enforcement law in different states are eased today by the adoption in 33 states of the Uniform Enforcement of Foreign Judgments Act, 13 U.L.A. 149, 181 (1986).

There can be no question that the district court is capable of enforcing Michigan's judgment in this case. The judgment calls for a type of action — excluding testimony by a witness — that is easily and regularly taken. Indeed, given the nature of the relief requested, it does not matter whether the court applies Michigan, Missouri, or federal enforcement law. The only thing that the district court may *not* do is refuse to enforce the judgment altogether. For that would be to treat the Michigan decree differently than a similar decree from a Missouri court, and in doing so to thwart the Michigan judgment in direct contravention of the Full Faith and Credit Clause.[7]

3. There is a second context in which the equitable nature of a judgment may affect the obligation of full faith and credit. Petitioners do not refer to it, perhaps because it does not help their case. We nevertheless mention it briefly to avoid any risk of confusion.

Recognition in the interstate setting is generally thought to be required only for *final* decrees and judgments. RESTATEMENT (SECOND), § 107; Scoles & Hay, *supra*, at 963. Some decrees may lack sufficient indicia of finality to invoke the obligation of full faith and credit even if they are treated as judgments by the rendering state. In *Sistare v. Sistare*, 218 U.S. 1 (1910), for example, a plaintiff who was awarded alimony in a divorce action won a second judgment in New York for payments that her former husband had failed to make under the divorce decree. She sued on this second judgment in Connecticut. Relying on *Lynde v. Lynde*, *supra*, the Connecticut court refused to recognize or enforce the New York judgment. This Court reversed, holding that a judgment for payments past due under a divorce decree is entitled to full faith and credit. *Lynde* was distinguished on the ground that it

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[7] The case might be different if enforcement of the Michigan decree required "continuing supervision by the enforcing court or [was] otherwise onerous." RESTATEMENT (SECOND), § 102, comment *c*. But that is simply another question not presented by this case.

concerned *future* alimony: Its ruling that full faith and credit did not apply, the Court said, "was expressly based upon the latitude of discretion which the courts of New Jersey were assumed to possess over a decree for the payment of future alimony." *Sistare*, 218 U.S. at 16. According to the Court, the "general rule" of full faith and credit may not apply where a judgment "is discretionary with the court which rendered the decree, to such an extent that no absolute or vested right attaches * * * ." *Id.* at 17.

Cases like *Lynde* and *Sistare* are sometimes erroneously read to stand for the proposition that a modifiable judgment is not entitled to full faith and credit. See, *e.g.*, RESTATEMENT (SECOND), § 109. Such a reading is much too broad, however, for *all* judgments may be modified in appropriate circumstances. See Fed. R. Civ. Proc. 60(b). The doctrine is, rather, confined to certain judgments in the field of domestic relations — alimony, child support, child custody, and the like — that are issued with the affirmative expectation that they will be modified, and so are unlike the usual final decree of a court. See *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 612-13 (1947) (noting that the power to revise a child custody decree is not restricted to changed circumstances but is always governed by the best interests of the child); Cramton, Currie, Kay & Kramer, *supra*, at 455.[8]

Whether these alimony, support, and custody cases are still good law is uncertain. Justice Jackson objected fiercely to denying full faith and credit to the judgment of a sister state on the ground that it was not final enough, *Barber v. Barber*, 323 U.S. at 86-88 (Jackson, J., concurring), and the Court

[8] Accordingly, it is not surprising that every case cited on this point by the RESTATEMENT (SECOND), § 109, both in the original text and in the supplements, involves domestic relations.

deliberately left the issue open in both *Barber* and *Halvey*.[9] The answer may be, as Justice Frankfurter argued, that family law is different — that it involves considerations so unlike other controversies as to render "technical questions" of finality "irrelevant." *Halvey*, 330 U.S. at 616 (Frankfurter, J., dissenting). But whether or not the principle in these domestic relations cases is still valid, it plainly does not extend to ordinary judgments for a final injunction. Unlike the designedly provisional decrees issued in the context of alimony or child support, permanent injunctions are intended to be final and so invoke the interests protected by the Full Faith and Credit Clause. Consent decrees and injunctions can be modified, of course, just like any other judgment. But modification is appropriate only in limited circumstances and only if the court that issued the injunction finds that the facts warrant a change. See, *e.g.*, *First Protestant Reformed Church v. De Wolf*, 100 N.W.2d 254, 357 (Mich. 1960). That the rendering court has reserved the option to modify an injunction if subsequent developments render it oppressive or self-defeating in no way alters the essential fact that the decree is meant to be a final disposition on the merits to which the obligation imposed by the Full Faith and Credit Clause must attach.

4. The fact that an injunction can be modified is not without consequences for full faith and credit analysis. Both the Constitution and 28 U.S.C. § 1738 have been interpreted to require only that a judgment receive the *same* respect and recognition as it would receive in the state that rendered it. This

[9] Uncertainty created by the Court's decisions in these cases and in *May v. Anderson*, 345 U.S. 528 (1953) (full faith and credit not required for custody decree rendered by court lacking personal jurisdiction over mother), was an important factor leading to the enactment of the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, which requires recognition of child custody determinations under specified conditions. The adoption of this statute, together with a more recent statute dealing with child support (*see* 28 U.S.C. § 1738B), has to a large extent eliminated the problem of non-recognition in this context.

Court stated the rule in *Halvey v. Halvey*, 330 U.S. at 615: The forum must recognize and enforce another state's judgment to the same extent as a court in the rendering state, which means that it also "has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered."

The district court in Missouri is thus free, if it chooses, to disregard or modify the Michigan injunction to the same extent — but *only* to the same extent — as a Michigan court. Under Michigan law, a court presented with a request for modification must order the parties to seek relief from the court that entered the decree. See Mich. Civ. R. 2.613(B). Under the Full Faith and Credit Clause, then, a Missouri court must do the same thing.[10]

B. The Full Faith And Credit Clause Does Not Become Inapplicable Because Enforcing A Judgment Has Incidental Effects On Third Parties

Petitioners' principal argument (Pet. Br. 12-18) is that the Michigan judgment cannot be enforced against Elwell, because to deprive them of Elwell's testimony violates due process by binding them to a judgment rendered in proceedings in which they neither participated nor were parties.

1. The argument is specious. No one has ever suggested that the Michigan judgment binds petitioners. The judgment binds only the parties to it: GM and Elwell. GM is simply asking a federal district court in Missouri to do what a Michigan court would assuredly do and enforce the judgment against Elwell. The need to enforce arises in the context of petitioners' lawsuit because it is in this lawsuit that Elwell is planning to disobey the Michigan judgment. The only party bound,

[10] As the court of appeals observed (Pet. App. 15a), Elwell and others have tried to have the Michigan injunction modified or vacated on "several occasions," the most recent only last year. Petitioners have refused to do so.

however, and the only party against whom the judgment is to be enforced, is Elwell.

Enforcing the judgment against Elwell obviously has an *effect* on petitioners: a witness whose testimony they had hoped to use would become unavailable. But if that is enough for petitioners to say that they are unconstitutionally "bound," the legal system is in trouble, for judgments affect third parties in this way all the time, often in circumstances that are considerably more meaningful than this.[11] To take a common example, suppose A sues B for possession of certain property, and the court awards the property to A. If C has a claim against B (but not A) for the same property, the judgment obviously affects C's rights: C has lost its legal right to sue for possession and must settle instead for damages, which may not be as satisfactory. Yet no one would seriously contend that C has been "bound" by A's judgment against B. Or suppose that A obtains a divorce from B. The divorce affects the legal rights (as well as other interests) of their child C in a variety of ways that are only partly redressed by child support and visitation. Yet C's due process rights are not violated as a result of these consequences. Or suppose that A obtains a judgment requiring B to close his adult bookstore on nuisance grounds. C's right to purchase from B is obviously affected, but no one would say that C has therefore been bound by the judgment.

The point seems obvious: Judgments may affect third parties in a variety of ways that limit legal interests they would otherwise possess. *Martin v. Wilks*, 490 U.S. 755, 770-73 (1989) (Stevens, J., dissenting); *cf.* Fleming James, Geoffrey C.

[11] It is worth noting that the Full Faith and Credit Clause is incidental to petitioners' claim that enforcing the judgment against Elwell violates their due process rights, because those rights would be equally "violated" by the decision of a *Michigan* court to preclude Elwell from testifying at the behest of a third party in Michigan. The potential implications of a ruling in petitioners' favor are thus very broad and would raise a difficult due process issue in every instance where a judgment affects third parties.

Hazard & John Leubsdorf, CIVIL PROCEDURE 688 (4th ed. 1992) (judgment may affect legal interests of nonparty, who can petition for equitable relief only on grounds that court lacked subject-matter jurisdiction or judgment was a product of fraud directed at petitioner). Indeed, Rules 19 and 24 of the Federal Rules of Civil Procedure were amended in 1966 to protect persons whose interests might "as a practical matter" be affected by a judgment in a case to which they were not parties. Often these rules lead to the inclusion of such parties in the litigation. But if they are not joined or do not intervene — whether because they sat on their rights or because they never knew those rights were in jeopardy — they still must live with the consequences.

None of the illustrations above differs in any material sense from petitioners' case. Their "right" to Elwell's services is no different from the rights of the claimants in the examples to sue for possession of property, to receive the full services of a parent, or to buy a product from someone willing to sell it. Without the Michigan judgment, petitioners might have been able to use Elwell as a witness.[12] With it, he is no longer

[12] Even this much is not entirely clear. Despite the label "fact witness," it appears that Elwell is to testify as an expert: certainly he is being paid as an expert, and his testimony was described in such terms by the district court. See Pet. App. 22a. That being so, petitioners could not have compelled Elwell's assistance had he turned down their invitation to consult; they simply would have had to find another expert to testify about GM fuel systems. Nor would it have mattered why Elwell declined petitioners' offer. Had he refused because, as a loyal former GM employee, he did not want to hurt the company, petitioners would have had no recourse: no court will order an unwilling expert to work when other qualified witnesses are available. Enforcing the Michigan judgment thus leaves petitioners no worse off than they would have been had Elwell honored the agreement with GM, as he should have done. Indeed, it leaves them no worse off than any party who is unable to hire the expert witness it most desires. It is perverse to twist the fact that, by virtue of the consent decree, Elwell can be made to abide by his agreement into the conclusion that petitioners are therefore being "bound" by the judgment in violation of due process.

available. But this no more violates due process than do the similar effects in the hypotheticals.

Any conceivable doubt in this regard is removed by this Court's decision in *Morris v. Jones*, 329 U.S. 545 (1947). Morris sued Chicago Lloyds (an unincorporated association licensed to sell insurance in Illinois, Missouri, and other states) in Missouri for malicious prosecution and false arrest. While this action was pending, Chicago Lloyds filed for bankruptcy in Illinois. Jones's predecessor was appointed "statutory liquidator," and the Illinois court issued an order staying all suits against the company. Morris had notice of this order but nevertheless continued to prosecute his claim in Missouri. Counsel for Chicago Lloyds withdrew, explaining that the company's assets were controlled by the liquidator (who was not made a party). The Missouri court then issued a default judgment in favor of Morris, who made it the basis for his claim in the Illinois bankruptcy proceedings.

The Illinois bankruptcy court disallowed Morris's claim, but this Court reversed. The Court held that, because the Missouri decision was a final judgment entitled to full faith and credit, its determination of the validity and amount of Morris's claim was "final and conclusive" and could not "be challenged or retried in the Illinois proceedings." 329 U.S. at 551-52. Like petitioners here, Justice Frankfurter protested in dissent that this was unfair to other creditors, none of whom were parties in the Missouri action and all of whom were being deprived of their right to challenge Morris's claim to a portion of the assets. *Id.* at 559-65 (Frankfurter, J., dissenting). Nevertheless, the Court replied, "[t]he command is to give full faith and credit to every judgment of a sister State." *Id.* at 553. See also *Riehle v. Margolies*, 279 U.S. 218 (1929).[13] Petitioners are in a position

[13] In a similar vein, the Court has held that the judgment of a federal court may conclusively establish a party's claim to a share of a decedent's estate in state probate proceedings. See, *e.g.*, *Waterman v. Canal-Louisiana Bank and Trust Co.*, 215 U.S. 33 (1909); *Byers v. McAuley*, 149 U.S. 608 (1893);

analogous to that of the other creditors in *Morris*, except that the effect of the Michigan judgment on their interests is far less harsh. And like those creditors, petitioners have no ground to complain simply because the constitutional obligation to recognize Michigan's judgment has this incidental effect on their litigation strategy.[14]

2. As against this, petitioners are able to offer no authority establishing that such effects constitute a violation of the Due Process Clause. They insist that enforcing the Michigan judgment against Elwell deprives them of their "right to pursue a lawful claim of liability." Pet. Br. 16. But no issues of fact or law are being foreclosed, nor are any obstacles being placed in the way of petitioners' right to recover. They are merely being deprived of the use of a single, nonessential witness whose testimony can be replaced. Such "deprivations" happen all the time in litigation, and for a whole host of reasons.

This last observation also provides a complete answer to petitioners' related contention that enforcing the Michigan judgment deprives them of the right to "elicit[] relevant, nonprivileged evidence." Pet. Br. 16. Unlike their point about being deprived of the right to pursue a claim, at least this assertion is based partly in reality: enforcing the Michigan judgment will indeed limit the evidence available to petitioners. But as the rules of discovery and evidence make abundantly clear, this "right" is restricted for a multitude of extrinsic policy

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Hess v. Reynolds, 113 U.S. 73 (1885); *Yonley v. Lavender*, 88 U.S. (21 Wall.) 276 (1874).

[14] The Court in *Morris* observed in dictum that "[i]f this were a situation where Missouri's policy would result in the dismemberment of the Illinois estate so that Illinois creditors would go begging, Illinois would have such a large interest at stake as to prevent it." 329 U.S. at 554. Similarly, as we explain below, this case might be different were Elwell's testimony irreplaceable and so central to petitioners' claim that without it they could not hope to make a case at all. But since that manifestly is not the situation, there is no need to address this possibility.

considerations, many of them less weighty than the constitutional obligation to recognize and enforce a sister state's judgment. See, *e.g.*, Fed. R. Evid. 403 (cumulative evidence excluded to save time); Fed. R. Evid. 407 (evidence of subsequent remedial measures excluded to encourage improvements); Fed. R. Evid. 408 (evidence of settlement discussions excluded to encourage settlement); Fed. R. Evid. 409 (payment of medical expenses excluded to facilitate treatment); Fed. R. Evid. 410 (evidence of plea discussions excluded to encourage guilty pleas); Fed. R. Evid. 412 (evidence of prior sexual conduct of victim excluded to protect privacy and encourage victims to seek legal redress). To the extent, then, that compliance with the Full Faith and Credit Clause has the incidental effect of imposing this modest restriction on petitioners' free use of evidence, they have no ground to complain.

Certainly *Ex Parte Uppercu*, 239 U.S. 435 (1915), offers no support for petitioners' position. In that case, after the parties to a lawsuit settled their claim, the federal district court before whom it was heard agreed to enter an order sealing the evidence. Uppercu wanted a deposition from the case, which he believed might be useful in an action he was pursuing against someone else. The district court denied Uppercu's request because one of the parties to the former action objected, and Uppercu sought relief by way of mandamus.

This Court granted the petition, holding, as petitioners here indicate, that Uppercu should have access to the evidence. But the Court's decision rested on grounds that have no bearing on the issues presented here. The order sealing the evidence was not a final judgment or even part of the judgment in the case; it was an administrative order entered by the court for the convenience and benefit of the parties. No one argued that Uppercu was or could be bound by it, and, of course, there was no issue of full faith and credit because the proceedings all took place in the same court. This Court did not mention due process or even the Constitution in ruling for Uppercu. Rather, the

Court held that, "however proper and effective the sealing may have been as against the public at large," a federal court should not deny access to evidence to someone who needs it for trial unless there is a good reason. 239 U.S. at 440 ("So long as the object physically exists, anyone needing it as evidence at a trial has a right to call for it, unless some exception is shown to the general rule. We discover none here.") The Court's decision establishes a rule of procedure for federal judges to follow where evidence is sealed, presumably based on the Supreme Court's supervisory power over federal courts. The ruling is not based on the Constitution, and there is not even a hint that the opposite result would have violated Uppercu's due process rights. Indeed, courts routinely seal evidence in ways that deny access to other parties seeking it for litigation; under *Uppercu*, they simply need a reasonable justification to do so.[15] The ruling is thus fundamentally different from a case in which the constitutional obligation to give a final judgment full faith and credit has the incidental effect of limiting a party's ability to call a particular witness.

The only authority cited by petitioners that even remotely supports their position is *Martin v. Wilks*, 490 U.S. 755 (1989). In that case, African-American plaintiffs sued the City of Birmingham in federal court for race discrimination in hiring and promoting firefighters. The parties negotiated two consent decrees setting forth a remedial plan calling for extensive affirmative action. After approval of the decrees, a group of white firefighters ("the Wilks respondents") filed a separate action alleging that the decrees violated their rights under federal law. The district court ruled that the City could not be held liable for race discrimination for making promotion

[15] The Court emphasized that Uppercu was entitled to this evidence because the only reason offered to deny him access was "the mere unwillingness of an unprivileged person to have the evidence used." 239 U.S. at 440. In this case, by contrast, there is a very powerful reason: the constitutional obligation to recognize and respect the final judgment of a sister state.

decisions required by the consent decree. The court of appeals reversed, and this Court affirmed that decision.

At first blush, there seem to be parallels between *Martin* and this case. The City argued that the challenge to the consent decrees constituted an improper collateral attack, to which the Wilks respondents replied that the consent decrees could not bind them because they had not been parties to the action in which the decrees were entered. Justice Stevens, in dissent, reasoned that the Wilks respondents were not bound, but that the consent decrees could have a practical effect on their job opportunities. 490 U.S. at 769. One might be tempted to conclude that *Wilks* thus supports a claim that petitioners' due process rights could be violated if enforcing the Michigan judgment has the practical effect of curtailing their use of Elwell as a witness.

One problem with this conclusion is that the Court in *Wilks* never held that the due process rights of the Wilks respondents were violated. The City agreed that the Wilks respondents could challenge the consent decrees, but argued that this opportunity was confined to intervention in the original action under Fed. R. Civ. P. 24 (an option that was no longer available because of the timeliness requirement). This Court held that this was an erroneous reading of the Federal Rules of Civil Procedure: Rule 24 intervention is optional, not mandatory, and a party seeking to foreclose the challenge of another party must join him or her under Rule 19. 490 U.S. at 762-68. Absent some change in the rules — a change Congress made for civil rights cases when it overruled *Martin* in the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(n)(1) — there was no affirmative legal basis upon which to limit the choice of forum of parties in the position of the Wilks respondents.[16]

[16] This is how counsel of record for petitioners interpreted *Martin v. Wilks* in testimony he gave to Congress in connection with the statute that overruled it. See Hearing Before the Senate Comm. on Labor and Human Resources on S. 2104, 101st Cong., 1st Sess. 549-550 (1989) (prepared statement of

There is, nevertheless, suggestive dictum in *Martin* about due process. And it may well be that a point can be reached where a judgment's effects on a third party are so profound that the judgment should be treated "as if" that party were formally bound. The effect of the consent decrees in *Martin*, after all, was to give the defendants a complete defense that barred the plaintiffs' claim altogether; their defense may not have been labeled "*res judicata*," but it had precisely the same effect on their "legal rights." 490 U.S. at 759. The Court need not decide whether "effects" can become so consequential as to be tantamount to making a judgment binding, for the effects here are nowhere near that significant. Rather, as explained above, the effects of the Michigan decree on petitioners are incidental in a way that is common in litigation, limiting only their ability to call a single witness who is useful but not essential to their case. Such negligible consequences cannot possibly be equated with the situation in *Martin* or described as meaningful enough to rise to the level of a due process violation.

Laurence H. Tribe):

> Writing for a majority of five, Chief Justice Rehnquist argued that this result was a straightforward application of the Federal Rules of Civil Procedure. In the absence of an explicit congressional determination that Title VII litigation raises concerns warranting procedures that differ from those applicable in ordinary private law litigation, the Court declined to depart from the usual rule that an individual cannot be bound by a decision in a case to which he or she was not a party. The Court reasoned that, given the existing federal rules regarding the issue, a different decision would "require a rewriting rather than an interpretation of the relevant rules."

Professor Tribe went on to testify that the proposed statute was constitutional even though it would undoubtedly affect the rights of non-parties by virtue of the entry of a consent decree.

II. THERE IS NO JUSTIFICATION FOR MAKING AN EXCEPTION TO THE FULL FAITH AND CREDIT CLAUSE FOR THIS CASE

In Part II of their brief, petitioners assert that if the Full Faith and Credit Clause does apply it must yield to "overriding principles of law," in particular to "institutional and systemic interests in the integrity of judicial proceedings." Pet. Br. 18. The source of these avowed principles remains obscure. Petitioners do not claim that the district court could refuse full faith and credit on the basis of any Missouri public policy, which the law makes very clear would be improper. See *Yarborough v. Yarborough*, 290 U.S. 202 (1933); *Fauntleroy v. Lum*, 210 U.S. 230 (1908); RESTATEMENT (SECOND), § 117. A footnote in their brief suggests that a *federal* court may have overriding policy interests of its own, which could mean that petitioners are seeking an exception to full faith and credit applicable only in federal courts, presumably as a matter of federal common law. See Pet. Br. 18 n.8 ("Part II of this brief addresses the narrower, but critical, issue of a jurisdiction's interest in the integrity of its judicial proceedings — in this case of *federal* judicial proceedings") (emphasis in original). But the Court's precedents are unmistakably clear in holding that, absent an express exception created by Congress, state court judgments are entitled to the same effect in a federal court as in the court of a sister state. See, *e.g.*, *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873 (1996); *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75 (1984); *Kremer v. Chemical Const. Corp.*, 456 U.S. 461 (1982); *Allen v. McCurry*, 449 U.S. 90 (1980). It follows that petitioners must be seeking a limit on full faith and credit that is either required by or implicit in the Constitution itself.

In thinking about whether to create a new exception to the Full Faith and Credit Clause, it is important to bear in mind, as this Court has previously observed, that "[s]o far as *judgments*

are concerned * * * the actual exceptions have been few and far between." *Williams*, 317 U.S. at 294-95. Most of the rare exceptions are practically as old as the Full Faith and Credit Clause itself. See Scoles & Hay, *supra*, at 965-67, 984-86 (discussing exceptions for decrees relating to land and penal judgments). Indeed, in this century the Court has abolished one exception (the exception for tax judgments; see *Milwaukee County v. M.E. White Co.*, 296 U.S. 268 (1935)), prompting one leading commentator to observe that "[t]he area where nonrecognition is allowable has shrunk with time." Brilmayer, *supra*, at 183. Petitioners thus bear a heavy burden in seeking to justify creating a new exception to the Full Faith and Credit Clause. Yet none of the "overriding principles" they offer is sufficiently compelling to overcome this burden.[17]

1. Petitioners' first "overriding principle" is that the public has a right to "every man's evidence" (Pet. Br. 18 (quoting *United States v. Nixon*, 418 U.S. 683, 709 (1974)), a right they say is especially salient where former employees serve as "whistleblowers" to provide the public with information that would otherwise be concealed. Pet. Br. 19-24. To begin with, this is not a whistleblower case. Elwell is currently making his living testifying as a paid consultant about GM design and fuel systems. His testimony is based on known public information, largely because anything else he might be able to offer is protected by attorney-client privilege or the work-product doctrine. Thus, the Court need not worry here about whether to make an exception to full faith and credit for

[17] Even were the policies advanced by petitioners adequate to justify an exception to full faith and credit, it would not alter the outcome in this case, because any exception would be permissive rather than mandatory. Petitioners would therefore have to establish the additional fact that state or federal lawmakers had adopted the exception they propose. But Congress has not modified Section 1738, see *Matsushita*, 116 S. Ct. at 878 (quoting *Migra*, 465 U.S. at 80), and, as the court below held, Missouri's strong public policy is in favor of full faith and credit. Pet. App. 14a.

whistleblowers (in the unlikely event that such a problem ever actually arises).[18]

More fundamentally, while parties generally have fairly wide latitude in obtaining proof, their "right" to do so is anything but inviolate. As we observed above, the ability of parties to adduce even non-privileged evidence is qualified for a variety of extraneous reasons, most far less compelling than the constitutional policy reflected in the Full Faith and Credit Clause and its implementing statute. This is plainly true as to expert testimony: an expert may decline to be retained, in which case there is little a party can do to compel his or her testimony. Or one side in litigation may hire an expert first, sometimes for the express purpose of making that expert unavailable to the other side. Yet the Federal Rules of Civil Procedure not only permit this practice, they *protect* it. See Fed. R. Civ. Proc. 26(b)(4)(B) & 1966 Advisory Note (limiting discovery of experts retained but not to be called at trial and prohibiting discovery of experts "informally consulted"). Petitioners are thus wrong in saying that "what GM purported to purchase from Elwell * * * was not Elwell's to sell." Pet. Br. 19. Nor would the analysis change even if Elwell were considered an ordinary fact witness. A party's right to secure testimony from anyone with non-privileged information is still qualified and cabined by rules of evidence adopted to promote a broad range of extrinsic policies. See page 19, *supra*.

2. Petitioners next argue that courts in one state should not be permitted "to 'commandeer' the official processes of another sovereign," citing *New York v. United States*, 505 U.S. 144 (1992). Pet. Br. 24. Their reliance on *New York* is surprising, since the Court there expressly recognized that Congress *could* commandeer state courts to enforce federal law. 505 U.S. at 178. Indeed, in reaffirming this principle last Term

[18] If the issue were presented, however, the proper recourse would be to leave the decision whether to create an exception to Congress, which could amend or qualify Section 1738 if it thought this necessary.

in *Printz v. United States*, 65 U.S.L.W. 4731, 4733-34 (June 27, 1997), the Court acknowledged that "[t]he Constitution itself, in the Full Faith and Credit Clause, Art. IV, § 1, generally require[s] such enforcement with respect to obligations arising in other states." The Full Faith and Credit Clause is, by definition, a "commandeering" provision. Its whole purpose is to "interfere with the course of proceedings in the courts of another jurisdiction," Pet. Br. 24, by obligating those courts to recognize judgments of sister states, even when — *especially* when — this might mean enforcing rights contrary to forum policy. As the Court explained in *Morris v. Jones*:

> The function of the Full Faith and Credit Clause is to resolve controversies where state policies differ. Its need might not be so greatly felt in situations where there was no clash of interests between the States. The argument of convenience in administration is at best only another illustration of how the enforcement of a judgment of one State in another State may run counter to the latter's policy. But the answer given by *Fauntleroy v. Lum*, *supra*, is conclusive. If full faith and credit is not given in that situation, the Clause and the statute fail where their need is the greatest.

329 U.S. at 553.[19]

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[19] Quoting RESTATEMENT (SECOND), § 103, petitioners suggest that there may be a "limited exception" to full faith and credit for judgments "involv[ing] an improper interference with important interests of the sister State." Pet. Br. 24 n. 17. Of course, the RESTATEMENT itself cautions that "[t]he rule of this Section has an extremely narrow scope of application" and may be invoked only on "extremely rare occasions." RESTATEMENT (SECOND), § 103, comments *a*, *b*. But even were the provision to apply, its authority is doubtful. The exception is drawn from a law review article by Reporter Willis Reese. See Willis L.M. Reese & Vincent A. Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153, 171-77 (1949). Explaining that the theory of the exception is based on Justice Stone's dissenting opinion in *Yarborough v. Yarborough*, 290 U.S. 202 (1933), Professor Reese conceded that "it can fairly be said that this theory is one that has often been hinted at in the cases but rarely applied." 49

Petitioners offer a single relevant example to support their assertion that full faith and credit does not apply to judgments that interfere with the course of proceedings in another state's courts. Their brief describes this misleadingly in terms of "injunctions directed at the judicial process itself." Pet. Br. 26-27. To be accurate, the authorities they cite refer more narrowly to cases withholding full faith and credit from injunctions issued against the *prosecution of suit* in the courts of another state.

Petitioners are correct that lower courts have generally declined to give full faith and credit to antisuit injunctions, although this Court has never spoken to the issue. In our view, the decisions refusing to respect antisuit injunctions are dubious: A final judgment enjoining litigation is no different from any other final judgment. If the injunction is improper, the correct solution is to appeal, with final review available in this Court. The solution cannot be for the second state to ignore the injunction, thereby putting the parties in an impossible position and creating a situation in which courts from different states have issued directly conflicting decrees. *Cf. GTE Sylvania, Inc. v. Consumers Union*, 445 U.S. 375, 386 (1980). That is precisely what the Full Faith and Credit Clause is intended to prevent. As Justice (then Professor) Ginsburg has observed:

> A general rule of respect for antisuit injunctions running between state courts would take the problem out of the limbo between the due process clause and the full faith and credit clause in which it now flounders. State courts on the receiving end of such

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COLUM. L. REV. at 171. In fact, the only examples the authors provided were based on hypotheticals and dissents. *Id.* at 171-77. Nor had matters changed by the time the RESTATEMENT (SECOND) was approved two decades later, as another leading commentator observed: "There is * * * no authority whatsoever for the startling proposition [found in § 103]." Albert Ehrenzweig, *The Second Conflicts Restatement: A Last Appeal for Its Withdrawal*, 113 U. PA. L. REV. 1230, 1240 (1965). Time has not improved the situation, as courts have properly resisted this misguided attempt to convert a narrow set of specific exceptions into a general ad-hoc one.

> injunctions have not found this a palatable solution, but it would be consistent with the generally strict line the Supreme Court has taken on full faith and credit to judgments.

Hon. Ruth B. Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments*, 82 HARV. L. REV. 798, 828 (1969).

In any event, the proper handling of antisuit injunctions is yet another issue raised by the petitioners that need not be decided to resolve the question actually before the Court. This is so for two reasons. First, and most obvious, the Michigan decree is *not* an antisuit injunction. As we have repeatedly observed, no one is trying to stop petitioners from pursuing their tort claim against GM in Missouri. GM asks only for enforcement of the judgment it obtained against Elwell, recognizing that this has an incidental effect on petitioners' litigation strategy. Petitioners say that the need to deny full faith and credit in this case "follows *a fortiori*" (Pet. Br. 27) from the antisuit injunction cases. But the "interference" entailed by requiring the district court to respect Michigan's judgment is far less severe than that imposed by an antisuit injunction, which precludes a second court from hearing the case at all. It is less severe even than the run-of-the-mill case in which full faith and credit calls for the forum to dismiss on *res judicata* grounds, again depriving it of any opportunity to adjudicate.

Second, the only plausible rationale for denying full faith and credit to antisuit injunctions is that they do not go to the merits of a suit, but rather are intended *solely* to prevent another court from deciding a case so that the enjoining forum can do so. See Leflar, McDougal & Felix, *supra*, at 246-247 (some antisuit injunctions amount "to a decision on the merits and bar[] a later suit"; others are "granted because of the inconvenience of an action" being brought elsewhere, are "not based on the substantive merits," and are not enforced by a

second court); Ginsburg, *supra*, 82 HARV. L. REV. at 823 (antisuit injunctions that have not been enforced were granted for reasons other than the merits). Antisuit injunctions, in other words, are designed to "keep litigation at home," and thus could risk generating the sort of friction that the Full Faith and Credit Clause is meant to prevent. *Cf. Tennessee Coal, Iron & R.R. Co. v. George*, 233 U.S. 354 (1914) (in applying another state's law, the forum may disregard provision requiring venue in the other state); *Crider v. Zurich Ins. Co.*, 380 U.S. 39 (1965) (same). Whatever the strength of this justification as a reason to deny full faith and credit, it is plainly inapplicable to the injunction here. Michigan did not enjoin Elwell in order to deny other states the opportunity to adjudicate a dispute that it wanted to handle itself. Rather, the injunction was an indispensable part of the final resolution *on the merits* of a lawsuit before the Michigan court. By ignoring the decree, other states eviscerate the effectiveness of the Michigan judgment and so undermine Michigan's and GM's legitimate finality interests.

3. Petitioners' final argument (Pet. Br. 27) is that enforcing the Michigan injunction is inconsistent with the principle of *Donovan v. City of Dallas*, 377 U.S. 408 (1964), that a state court cannot enjoin parties from pursuing an action in federal court. The point is makeweight and adds nothing to what has already been said. *Donovan* establishes that state courts lack power to issue antisuit injunctions directed at federal courts, a proposition we have no reason to question here. But that has nothing to do with this case, since the Michigan court has not enjoined petitioners from pursuing their litigation in federal court. If, on the other hand, petitioners mean to say that it follows from *Donovan* that no state court judgment can affect the proceedings in a federal court, a complete answer is provided by this Court's decision in *Matsushita Elec. Indus. Co. v. Epstein*, 116 S. Ct. 873 (1996). The Court there held that the entry by a Delaware court of a consent decree disposing of claims that were within the exclusive jurisdiction of the federal court nevertheless required the federal court to dismiss.

What petitioners fail to grasp is that the Full Faith and Credit Clause is itself a kind of antisuit injunction. It gives one court authority, by rendering a final judgment on the merits, to control the course of litigation in another court. Whether or not there should be an exception for decrees whose *sole* purpose is to control other courts (as opposed to resolving the merits of a dispute before the rendering court) is an issue that need not be decided here. This case presents what is really just a routine question of full faith and credit to which the proper answer is clear: the judgment of the Michigan court must be respected.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed and the case remanded for a second trial.

Respectfully submitted.

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APPENDIX

PRODUCT LIABILITY ADVISORY COUNCIL, INC.
LIST OF CORPORATE MEMBERS

3M
ACRISON, Inc.
Allegiance Healthcare Corporation
AlliedSignal, Inc.
Aluminum Company of America
American Automobile Manufacturers Assn.
American Brands, Inc.
American Home Products Corporation
American Suzuki Motor Corporation
Andersen Corporation
Anheuser-Busch Companies
Atlantic Richfield Company
BASF Corporation
Baxter International Corp.
Bayer Corporation
Becton-Dickinson & Company
Beech Aircraft Corporation
BIC Corporation
Black & Decker (U.S.) Inc.
BMW of North America, Inc.
Boeing Company, The
Bridgestone/Firestone, Inc.
Briggs & Stratton
Bristol-Myers Squibb Company
Brown-Forman Corporation
Budd Company, The
C.R. Bard, Inc.
Case Corporation
Caterpillar, Inc.
CBI Industries, Inc.
Chrysler Corporation
Ciba-Geigy Corporation
Clark Material Handling Company
Club Car, Inc.
Coleman Company, Inc., The
Continental General Tire, Inc.
Coors Brewing Company
Corning Incorporated
Daewoo Motor America
Dana Corporation
Deere & Company
Dow Chemical Company, The
Eaton Corporation
Eli Lilly and Company
Emerson Electric Co.
Estee Lauder Companies
Exxon Corporation
FMC Corporation
Ford Motor Company
Freightliner Corporation
Gates Rubber Company, The
General Electric Company
General Motors Corporation
Glaxo Wellcome Co.
Goodyear Tire & Rubber Company
Great Dane Trailers, Inc.
Guidant Corporation
H.B. Fuller Company
Harnischfeger Industries
Heil Company, The
Hoechst Celanese Chemical Group, Inc.
Hoechst Marion Roussel, Inc.
Honda North America, Inc.
Hyundai Motor America
International Paper Company
Isuzu Motors America, Inc.
Johnson Controls, Inc.
Kaiser Aluminum & Chemical

Corporation
Kawasaki Motors Corp., U.S.A.
Kraft Foods, Inc.
Loewen Group International, Inc.
Lorillard Tobacco Company
Lucent Technologies, Inc.
Mack Trucks, Inc.
Maytag Corporation
Mazda (North America), Inc.
Medtronic, Inc.
Melroe Company
Mercedes-Benz of N. America, Inc.
Michelin North America, Inc.
Miller Brewing Company
Mitsubishi Motor Sales of America, Inc.
Monsanto Company
Motorola, Inc.
Navistar International Transportation Corp.
Nissan North America, Inc.
O.F. Mossberg & Sons, Inc.
Otis Elevator Co.
Owens-Corning Fiberglas Corporation
PACCAR Inc.
Panasonic Company
Pentair, Inc.
Pfizer Inc.
Pharmacia and Upjohn, Inc.
Philip Morris Companies, Inc.
Porsche Cars North America, Inc.
Procter & Gamble Co., The
Raymond Corporation, The
RJ Reynolds Tobacco Company
Rover Group, Ltd.
Schindler Elevator Corp.
Sears, Roebuck and Company
Sherwood, a Division of Harsco Corporation
Simon Access-North America
Smith & Nephew Richards, Inc.
SmithKline Beecham Corporation
Snap-on Incorporated
Sofamor Danek Group, Inc.
State Industries, Inc.
Sturm, Ruger & Co., Inc.
Subaru of America
Textron, Inc.
Thomas Built Buses, Inc.
Toro Company, The
Toshiba America Incorporated
Toyota Motor Sales, USA, Inc.
TRW Inc.
UST (U.S. Tobacco)
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Company
Westinghouse Electric Corp.
Whirlpool Corporation
Yamaha Motor Corporation, USA